

August 23, 2002

VIA ECFS
Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

Re: Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in new Hampshire and Delaware, WC Docket No. 02-157
Ex Parte Filing

Dear Ms. Dortch:

The New Hampshire Public Utilities Commission (NHPUC) Staff files this Ex Parte letter in response to requests made by the FCC Staff. Please note that Verizon New England d/b/a Verizon New Hampshire is referred to as "VZ" herein.

1. In its Comments at page 51, Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) claims that the NHPUC failed to include Checklist items 4 and 11 from the list of checklist items it found VZ had met in its letter of March 1, 2002. That is factually correct. The NHPUC's letter indicated that VZ would only meet all checklist requirements if it would comply with a ten conditions. Checklist item 11 deals with number portability. The NHPUC's review of specific problems raised by CLECs, including an incident involving the hotcut of a hospital's lines, impelled its imposition of Condition 8 in the March 1st letter. VZ agreed to Condition 8, and as a result has or will convert all interim number portability to permanent number portability now. As a result of VZ's agreement the NHPUC determined that VZ meets the requirement of Checklist item 11.

Item 4 deals with provisioning local loop transmission from the CO to the customer prems, unbundled from local switching or other services. Item 4 was addressed by the

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NHPUC's Conditions 1, 2, and 10 in the March 1st letter, and by VZ's agreement to those conditions, as memorialized in the NHPUC's June 14th letter to VZ. Condition 1 requires VZ to convert its SGAT into a standard tariff from which CLECs can purchase UNEs. Condition 2 requires rate reductions. Condition 10 required VZ employees who deal with CLECs to identify themselves in a manner that will allow the CLECs to contact the same employee.

The issues raised by Item 4 involves VZ's provisioning of UNE loops, transport, and dark fiber, including the "no facilities available" response of VZ to many CLEC requests for loops (especially dark fiber, high capacity loops) which is directly addressed in the NHPUC's Order No. 23,948 in DT 01-206, as discussed below in section #2. The NHPUC considered this issue when drafting its June 14th final opinion letter to VZ and its Consultative Comments to the FCC, dated July 17, 2002. In both, the NHPUC found that VZ meets all checklist items by satisfying the conditions listed.

BayRing's claim is therefore incorrect. The NHPUC considered VZ's compliance with checklist items 4 and 11, as well as all the other checklist items and concluded that VZ had met those requirements.

2. The Staff of the Wireline Bureau requested information about the NHPUC's conclusions regarding VZ's response to requests for Dark Fiber, specifically about the 84% "no facilities available" response. The NHPUC considered this issue at length in its Order No. 23,948 in Docket No. DT 01-206, *SGAT Additional Unbundled Network Elements*, dated April 12, 2002. Section III.A. of the Order sets out the positions of VZ, CLECs, and Staff regarding the appropriate fill factor to use for Dark Fiber given its non-availability; the Facilitator's recommendation, and the NHPUC's analysis. The NHPUC adopted an 80% fill factor for both dark and lit fiber to reflect the actual usage and avoid double counting by VZ. In addition, the NHPUC conducted an inquiry into the validity of VZ's "no facilities available" responses by requesting Dark Fiber for three different routes, reviewing the responses to the requests, and confirming the fiber presence. Having confirmed the validity of the response, the NHPUC dealt with the low level of Dark Fiber availability by requiring VZ, in future, to take projected CLEC demand into account when planning to build new fiber segments or fiber augments for itself. The NHPUC found that such a requirement does not rise to the level of construction of new or superior facilities. VZ asked for reconsideration of this decision, which the NHPUC declined. VZ has appealed several decisions in Order 23,948 to the New Hampshire Supreme Court but has not appealed from this decision.

3. The Staff requested information about VZ's reservation policy regarding Dark Fiber and the possibility that VZ may hoard such fiber for its own use. The NHPUC first addressed this issue in *Arbitration Regarding Request for Recognition of Dark Fiber as an Unbundled Network Element*, 83 NH PUC 316, 322 (1998), stating:

Implementing the unbundling of Dark Fiber requires consideration of (VZ's) status as carrier of last resort. All parties and Staff agree that (VZ) should retain enough spare fiber to meet short-term service needs. They testified to two

methods for achieving that status: allowing (VZ) to reserve the amount projected as adequate for three years, or allowing (VZ) to reserve 8 spare fiber strands in the local loop and 24 spare fiber strands in interoffice cable sections.

We choose to deal with the issue on a case-by-case basis in the context of a bona fide request and 20 day fast-track arbitration process, as suggested in Staff's brief. We approved this process in Docket DE 96-252 for reservation of space in rights-of-way, conduits and poles....At issue in this fast-track arbitration will be whether the LEC is reserving Dark Fiber which is not demonstrably necessary to meet its individual short-term service needs.

The NHPUC also addressed the issue of reservation in its Order No. 23, 948 in DT 01-206, *SGAT Additional Unbundled Network Elements*, dated April 12, 2002. In that docket, the Facilitator crafted resolutions to 26 out of 34 issues. The resolutions, to which no party objected, including a finding that VZ's proposed reservations terms are in compliance with NHPUC orders and mirror VZ's policies in other VZ states except for Massachusetts. For that reason, the NHPUC determined that VZ's reservation policy is reasonable.

4. The FCC Staff also requested information regarding the NHPUC's conclusions regarding the adequacy of VZ's Dark Fiber inquiry responses to CLECs. This issue was also first addressed in *Recognition of Dark Fiber as an Unbundled Network Element*, 83 NH PUC at 322. The NHPUC detailed the timing and the information VZ was to provide when denying a request for Dark Fiber. When evaluating VZ's performance of these requirements, as reported to the NHPUC by the Facilitator in DT 01-206, *SGAT Additional Unbundled Network Elements*, the Facilitator found that VZ had not performed as intended. Therefore, the Facilitator recommended and the NHPUC ordered that VZ provide initial Dark Fiber availability information within 15 business days and the full information, as specified in the original dark fiber order, within 30 days. Where it determines that no facilities are available, VZ will identify for the CLEC the route triggering the "no facilities available" response, indicate what alternate routes have been investigated, and show the first blocked segment on each route as well as all of those segments which are not blocked (15 Day Information). Within 30 calendar days, unless the CLEC declines by checking the negative check-off space on Verizon's Dark Fiber Request Form, Verizon shall provide more complete information (30 Day Information). The 30 Day Information required is enumerated in *Recognition of Dark Fiber as an Unbundled Network Element*, 83 NH PUC at 322. The NHPUC's decision that VZ is providing adequate information to CLECs is premised naturally on an assumption that VZ will comply with NHPUC orders.

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Sincerely,

E. Barclay Jackson, Esq.
Hearings Examiner

CC: Service List